STATE OF WISCONSIN
BEFORE THE ARBITRATOR

In the Matter of the Petition of:	Case 15 No. 50345 MIA-1872
TEAMSTERS UNION LOCAL NO. 695	Decision No. 28066-A
For Final and Binding Arbitration Involving Law Enforcement Personnel in the Employ of	Heard: 7/28/94 Record Closed: 11/4/94 Award Issued: 12/30/94
CITY OF VERONA (POLICE DEPARTMENT)	Sherwood Malamud Arbitrator

Appearances:

Previant, Goldberg, Uelmen, Gratz, Miller & Brueggeman, S.C., Attorneys at Law, by Marianne Goldstein Robbins, 1555 N. RiverCenter Drive, Suite 202, P.O. Box 12993, Milwaukee, Wisconsin 53212, appearing on behalf of the Union.

Lathrop & Clark, Attorneys at Law, by Melina R. Piontek Fischer, Suite 1000, 122 W. Washington Avenue, P.O. Box 1507, Madison, Wisconsin 53701-1507, appearing on behalf of the Municipal Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

On June 28, 1994, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to serve as the Arbitrator under Section 111.77(4)(b) of the Municipal Employment Relations Act to determine said dispute between the Teamsters Union Local 695, hereinafter the Union, and the City of Verona (Police Department), hereinafter the City or the Employer. Hearing in the matter was held on July 28, 1994, in the Verona City Hall. Post-hearing briefs and reply briefs as well as corrections to the record and to the briefs were received by the Arbitrator by November 4, 1994, at which time the record in the matter was closed. This Award is issued pursuant to Sec. 111.77(4)(b)form 2, in that:

> The Arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

SUMMARY OF THE ISSUES IN DISPUTE

I. Compensatory Time off

A. Cap On Compensatory Time Off Usage

Employer Offer

There are several issues in dispute. The central issue is the Employer's proposal to cap compensatory time **usage** at 80 straight time hours in a calendar year. Patrol officers may accumulate no more than 53.33 overtime hours at time and a half or 81 straight time hours. However, as compensatory time off is used, officers may rebuild their individual compensatory time off bank to the maximum accumulation of 81 hours. By rebuilding the compensatory time off bank, one officer has been able to use as much as 292 hours of compensatory time during a calendar year.

The Employer proposes the following changes to Article 5.1(c):

> In lieu of receiving pay for overtime hours worked, employees may request compensatory time off on a time and one-half (1 1/2) basis up to a maximum usage of fifty-three and thirty-three hundredths (53.33) overtime hours (i.e. eighty (80) straight time hours) from January 1 through December 31 of each year. ~~At no time shall the balance of time accumulated exceed fifty-three and thirty-three hundredths (53.33) overtime hours (i.e. eighty (80) straight time hours) without the written permission of the Chief of Police.~~ In all cases of compensatory time requests, if no part-time employee is available, full-time employees will be permitted to generate overtime (for pay only) to cover the compensatory time provided seven (7) days notice is given. Full-time employees may use up to four (4) days per year under this Agreement for compensatory time.

Union Offer

The Union proposes to retain the status quo by retaining the language of Article 5.1(c) as it appears in the expired agreement.

B. December Scheduling and Usage of Compensatory Time Off

Employer Offer

The Employer proposes language which requires that compensatory time off be used and/or scheduled no later than December 15 or the last pay

period of the calendar year. The Employer maintains that this proposal would retain the present practice of permitting officers to schedule compensatory time off to the end of the year.

> All unused overtime compensatory time off shall be converted to pay if not used by December ~~31~~ 15 or the last day of the last pay period of the calendar year, whichever is later. It shall be paid in the last pay period of the year.

Union Offer

The Union proposes to retain the status quo by retaining the language of Article 5.1(e) as it appears in the expired agreement.

C. Compensatory Time Off Maximum Accumulation Bank

The Employer proposes to reduce the maximum accumulation of compensatory time off from 81 to 80 hours.

The Union proposes to retain the status quo.

II. Uniform Allowance

In exchange for its proposal to change the status quo, the Employer proposes that the uniform allowance be increased from $275 to $325 effective January 1, 1994, and then, again, increase to $350 effective January 1, 1995.

The Union proposes to keep the annual uniform allowance voucher at $275 for the life of the successor agreement.

III. Half-Day Holiday: Good Friday

The Union proposes that officers receive an additional half day holiday on Good Friday.

The Employer proposes to retain the status quo of nine specified holidays and two personal days.

IV. Wages

Both the Employer and the Union propose to increase salaries by 4.2% effective October 1, 1993.

There is a slight difference in the wage proposals for the second year of the Agreement. The Employer's wage proposal is larger than the Union's. It serves as part of the quid pro quo for its proposal to change the status

quo. The City proposes to increase officer pay across the board by 4.2% effective October 1, 1994. The Union proposes to increase officer salary across the board by 4.0% effective October 1, 1994.

BACKGROUND

The City of Verona is located four miles west of the City of Madison. Its population was estimated at 5,732 in 1993. In its Master Plan, the City projects growth to a population of 8,750 by the year 2015. The growth and demand for police service has significantly outpaced the growth in population in the last several years. From 1989 through 1993, the population of the City of Verona has grown from 4,587 to 5,732. During the same period, the growth in calls for service increased from 4,374 to 8,102.

Police Chief Moffet has commanded the Police Department since August 1, 1978. In August 1989, the authorized strength of the department, inclusive of command, was increased to ten. At present, the authorized strength of the Department remains at ten. Of the ten, seven are bargaining unit officers whose function is limited to patrol duties. Patrol officers are assigned to five shifts. Two officers are designated as relief, in order to staff the patrol function 24 hours per day, 365 days per year. The shifts worked are as follows: Days - 6 a.m. to 2 p.m.; Evenings - 2 p.m. to 10 p.m.; Power Shift - 11 a.m. to 7 p.m.; Swing Shift - 7 p.m. to 3 a.m.; and Night Shift - 10 p.m. to 6 a.m.

The Department employs part-time officers to fill in for full-time officers who may be off for various reasons including compensatory time off. The part-time officers have other full-time jobs or school commitments which limit their availability. The part-time officers are not included in this bargaining unit.

As noted above, the most important issue in dispute is the Employer's proposal to cap the usage of compensatory time off to 80 hours per calendar year. The parties have identified this issue as the single most important issue through the presentation of evidence and in the 126 pages of briefs and reply briefs submitted, in this case. Money is not a significant issue in this case. The Employer offer is slightly higher than the Union's. It is significant only in so much as, and the extent to which, the monetary offer of the Employer is deemed to constitute a quid pro quo for the change in the status quo proposed by the Employer in its final offer.

For its part, the Union attempts to change the status quo by adding Good Friday as a half-day holiday. The Union argues that under the language of the expired agreement, it is entitled to the holiday. The language is part of the stipulation of agreed-upon items. It will be included in the successor agreement. The Union maintains that its proposal merely serves to clarify the agreement, rather than change the status quo by adding another half-day

holiday. The City does not agree to the interpretation of this language put forth by the Union.

The Union represents the other organized collective bargaining unit of City employees in the Department of Public Works and clerical employees of the City. This is the first occasion that any unit of represented employees has proceeded to arbitration. The parties disagree over the communities which should serve as comparables to the City of Verona in determining this dispute.

The expired collective bargaining agreement had a one year duration. It was in effect from October 1, 1992, to September 30, 1993. The successor agreement, which is the subject of this interest arbitration award, will be effective from October 1, 1993, for a period of two years ending on September 30, 1995. The anniversary date of agreements covering law enforcement personnel of comparable communities are all in effect for calendar years; i.e., January 1 through December 31. Many of the comparables have agreed to split increases, especially in the first year in dispute - 1994, which creates a problem in comparing the parties' proposals in the City of Verona to increases received by the comparables. Is the City of Verona three months early in providing increases to its employees for 1994 and 1995, or is it nine months late in providing those increases?

STATUTORY CRITERIA

The criteria to be used to resolve this dispute are contained in Sec. 111.77(6), Wis. Stats, as follows:

> (6) In reaching a decision the arbitrator shall give weight to the following factors:
>
> (a) The lawful authority of the employer.
> (b) Stipulations of the parties.
> (c) The interests and welfare of the public and the financial ability of the unit of government to meet these costs.
> (d) Comparison of the wages, hours and conditions of employment of the employes involved in the arbitration proceeding with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally:
> 1. In public employment in comparable communities.
> 2. In private employment in comparable communities.

(e) The average consumer prices for goods and services, commonly known as the cost of living.

(f) The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(g) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(h) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

POSITIONS OF THE PARTIES

The Union Argument

The Union argues that there is no problem with the compensatory time language as it appears in the expired agreement. It opposes the change to the language proposed by the City.

The Union maintains that the City's proposal to amend the language of 5.1(e) would change the parties' practice. It would prevent employees from taking comp time between December 15 and December 31. Although the issue of whether the maximum accumulation is 81 or 80 hours is a minor issue, the Union notes that agreement to increase the accumulation cap to 81 was achieved in the last agreement to ease the administration of this provision.

The Union argues that the Employer offer to increase the uniform allowance is unnecessary. The uniform allowance system in Verona is based on a voucher system. Each employee does not automatically receive the full amount of the allowance. Rather, the officer replaces individual items in the Verona uniform, as necessary. Employees may carry over any balance from one year to the next. Consequently, the Union maintains that the $275 allowance is adequate.

The Union maintains that the salary proposed by the City is equal to the average percentage increase afforded by comparable employers. The salary increase of 4.2% paid across the board effective October 1, 1994, does

not constitute a quid pro quo for the proposed change in the compensatory time off language. The Union argues that the two-tenths of a percent higher wage increase offered by the City in the second year of the successor agreement does not offset the higher lift provided by comparables to their law enforcement employees through mid-year split increases.

The Union argues that its proposal to add Good Friday to the list of holidays in Article 4.1 of the agreement simply clarifies the effect of the following language found in the expired agreement and which will be included in the successor agreement. The pertinent language reads, as follows:

> All employees shall receive holiday pay for all additional holidays declared by the Mayor for any other City employees.

The Union notes that Good Friday afternoon was added to the list of holidays enjoyed by employees in the City's DPW and Clerical Unit in their 1992-94 agreement. The Union's proposal simply clarifies the effect of the above language.

The Union maintains that should the Arbitrator view its proposal on Good Friday as a change to the status quo, then the Union's proposal to take two-tenths of 1% less in salary than offered by the Employer should serve as a quid pro quo for the Good Friday proposal.

The Union argues that comparability is an important criterion to be considered in determining this case. The Union notes that both parties agree to seven comparables: De Forest, Fitchburg, McFarland, Monona, Oregon, Stoughton, and Waunakee. The Union adds the cities of Middleton and Sun Prairie to this list of comparables. Although both Middleton and Sun Prairie employ a larger number of bargaining unit police officers than the largest agreed-to comparable, Fitchburg [Stoughton], the Union maintains that the tax rates and the geographic proximity in the suburban ring surrounding Madison make these two larger employers appropriate comparables to Verona.

The Union meets the City's proposal to include Cross Plains, Belleville, Mt. Horeb, Dodgeville, Town of Madison, and Milton as comparables. The Union notes that neither Mt. Horeb nor Cross Plains have a provision on compensatory time off. The Town of Madison has twice the crime rate of Verona. Milton and Dodgeville are in counties other than Dane, and these communities are geographically remote from Verona. Dodgeville is in Iowa County, and Milton is in Rock.

The Union argues that only De Forest among the communities which it defines as comparable to Verona does not permit the rebuilding of the

comparability bank. The Union maintains that the comparability criterion supports the selection of its proposal.

The Union dismisses the Employer's internal comparability argument. The Department of Public Works/Clerical unit, an internal comparable, has a cap on the usage of compensatory time off. The Union notes that the Police Department differs substantially from the other departments of the City. Overtime and the accumulation and usage of compensatory time off are far more significant in the police unit than in the other organized unit of employees in the City of Verona.

The Union argues that the internal comparability argument should be given little weight by the Arbitrator for another reason. The Union notes that the other City unit obtained a substantial quid pro quo for its agreement to the comp time usage cap. Employees at certain specific classifications received larger increases. The change to the comp time language was achieved in the 1990-92 agreement. In that bargain, the Clerk Typist position received a 5.7% increase; the Maintenance I position a 13.5% increase. In addition, the Secretary and Police Records/Sewer Water Clerk position received a 4.9% increase. These increases exceeded the approximately 4% increases received by the other employees in this unit.

The Union maintains that the City's comp time proposal will not achieve the economic savings alleged by the City. The Union notes that additional overtime was worked in 1990 and 1991 due to traffic resulting from road construction in and around the City. The Union maintains that comp time usage is declining. It was less in 1993 than in 1991. Payout of overtime through compensatory time off is cheaper to the City than reimbursing employees for overtime worked at time and a half.

In its Reply brief, the Union notes that the smaller suburban communities such as Belleville and Cross Plains employ two police officers. These departments do not operate around the clock on a 24-hour basis.

The Union argues that safety considerations do not mandate the adoption of the Employer's comp time proposal. Except for four "gimme" days, comp time may be taken only if a part-time employee is available to replace the full-time employee on compensatory time off. Otherwise, except for the four "gimme" days, overtime may not be used to staff the shift on which an employee takes compensatory time off.

The Union notes that the City's argument focuses on one of the unit's employees. He is the most senior employee, the Union Steward, and the officer who is first offered overtime opportunities. He works a lot of overtime, and therefore, he accumulates a lot of compensatory time off.

The Union points to its Exhibit No. 43 which demonstrates that the Chief, Sergeant and Lieutenant all took more time off than bargaining unit

employees. The Union concludes that its final offer is the more reasonable and should be selected by the Arbitrator for inclusion in the successor Agreement.

The Employer Argument

The Employer defends its proposed comparability grouping. It cites Arbitrator Kossoff in his decision in Sun Prairie in which he looked at comparable employers in a 50-mile radius, City of Sun Prairie (Police), Dec. No. 27686-A (1992). The City emphasizes that the average population of its comparables closely approximates the population of Verona. The average population of the comparables which it proposes approximates 5,853. Verona's population is estimated to be 5,732 in 1993.

The City vehemently opposes the Union's attempt to include the much larger Middleton and Sun Prairie police departments as comparables to Verona. The Middleton department employs 16 bargaining unit police officers and Sun Prairie employs 17. The inclusion of these two much larger departments together with Fitchburg, which employs 15, and Stoughton, with 17, provides a comparability grouping in which only McFarland employs fewer police officers than the 7 employed in Verona. De Forest and Waunakee each employ 7 bargaining unit officers. The City maintains that the range of comparables which it proposes equally balances departments which are larger and smaller than Verona.

In its reply brief, the City argues that there is no evidence that Verona is a suburb of Madison. It asserts that the suburban quality of Verona was not established through evidence presented at the hearing. The City notes that the Union excludes all departments which employ fewer than six bargaining unit officers.

With regard to the central issue in dispute here, the City maintains that it makes its proposal for safety and economic reasons. It argues there is a need for change. The change it proposes is modest and reasonable.

The City presents arguments concerning each of the statutory criteria. It notes that the criterion the interest and welfare of the public supports its proposal. The City has determined to cover 70% of leaves taken by unit employees from the work schedule. It will not use part-time officers to fill those staffing gaps. Limited staffing has forced the Chief of Police to not schedule a Power Shift Sunday through Wednesday. The Power Shift is scheduled Thursday through Saturday. The Power Shift provides the presence of an additional officer on the streets of Verona during a period of time in which the City receives many calls for service.

The Employer argues that it has had to cancel 16 shifts in November and 24 shifts in December 1993 which were originally scheduled to be staffed by two officers due to one officer's use of vacation during the last two

months of the year. The officer in question used compensatory time during the year to preserve his vacation time. He then used that vacation time at the end of the year. The use of vacation for a period of six consecutive weeks resulted in the cancellation of shifts which would have provided additional manpower on the streets of Verona during the holiday period when the department receives many calls for service. Instead, officers had to respond to domestic disputes and other calls for service without immediate backup from within the City.

The City argues that the "interests and welfare of the public" criterion highlights the need for change. In order to meet staffing needs, the Department employs the Sergeant in staffing its shifts. When an officer takes a paid leave or compensatory time off, the swing or power shifts are canceled. The results are periods when there are many calls for service in which an officer must respond without immediate backup or in which response time by an officer is delayed.

The City notes that officers receive a great deal of time off. They work a six day on, three day off schedule. The most senior officer is entitled to 200 hours of vacation. Yet, it is this officer who accumulates and uses the largest amount of compensatory time off.

When that officer takes compensatory time off, there are four administrative responses possible. The first is to cover the shift with a part-time officer. The second is to require a full-time officer to work overtime to cover the shift. The third is to cancel the shift. The fourth is to reassign an officer from the power shift or the swing shift to cover the vacant shift.

The City notes that, compensatory time off usage is one reason for the Department's inability to staff Crime prevention and juvenile officers. When comp time or leave is taken at the end of the year, there is no budget to adequately staff the Department. During a time of year when the Department receives many calls, it is unable to staff it appropriately. The Employer argues that its proposal will give it a handle on comp time usage. The Employer notes that since 1986, on 19 occasions officers have exceeded 80 hours of comp time usage in a year.

The City anticipates the Union's argument that the City increase the size of its force. The City asserts that as the City increases the size of the Department, the compensatory time usage problem will only get worse.

The Employer computes the cost of replacing a full-time officer who takes compensatory time off rather than overtime. The City argues that it is more, rather than less expensive for the City, when employees take compensatory time off rather than take pay at overtime rates. In its calculation of the cost to the city of compensatory time usage, the City includes the cost of all hours of coverage, both straight and premium time, for the employee who takes compensatory time off. It asserts that it is a

myth that use of compensatory time off costs less than paying out overtime in cash.

The Employer points to comparable jurisdictions. Most have one restriction or another on compensatory time usage. Some require approval by the Chief. Yet, others do not permit an accumulation of 80 hours but of 60 hours. De Forest does not permit rebuilding of the comp time bank.

The Employer acknowledges that Cross Plains, Milton, and Mt. Horeb do not address the compensatory time off issue in their agreements. Belleville compensates at hour for hour rather than at time and a half. In Dodgeville, compensatory time is limited to uses of eight hours per month. In Fitchburg, mutual agreement of the Chief and the officer is necessary to schedule compensatory time off. In McFarland, there is a limited rebuilding of the compensatory time bank, but mutual agreement for using compensatory time off is necessary. In Monona, where officers have unlimited usage of comp time, it must be scheduled by mutual agreement between the Chief and the officer. In Oregon, no rebuilding of the compensatory time off bank is permitted and there are limits placed on the ability of officers to take compensatory time off. Stoughton not only limits the use of compensatory time off, but it does not permit rebuilding of the comp time bank. In the Town of Madison, officers are not permitted to rebuild the comp time bank. Compensatory time off must be granted so long as it does not result in overtime.

Waunakee limits compensatory time off usage over an entire career. The election to take compensatory time off for pay must be made early in the employ of the officer and that choice is to remain in effect for the career of the officer. The comparables suggested by the Union, Middleton and Sun Prairie, limit comp time usage. The Employer concludes that the external comparables support its proposal.

The Employer points to the internal comparable, the Department of Public Works. The Employer cites arbitral authority that internal comparables are to be given great weight in the determination of working condition issues. The other bargaining unit in the City has accepted an 80 hour cap on comp time usage. It also agreed to reduce that cap to a 60 hour cap on comp time usage.

The Employer argues that it has established the need for its proposal. There is a need for change. It has demonstrated that need by clear and convincing evidence. Accordingly, under the principles of changing the status quo expressed by Arbitrator McAlpin in City of Menasha, Dec. No. 27784-A, the Employer need not provide a quid pro quo for the proposed change.

Nonetheless, the Employer has proposed an adequate quid pro quo. In the first year of agreement, its proposal to increase salaries by 4.2% is in

effect for the entire year. Many of the comparables provide split increases at a cost substantially less than the 4.2% cost of its proposal here. In addition, the 4.2% increase proposed by the Employer generates greater dollars in the first year of the agreement than is generated by the split increases provided by comparables. The comparables that provide split increases may generate a lift in excess of 4.2%. However, the wage levels generated do not change the ranking of Verona relative to the salaries paid by comparable law enforcement units.

The City emphasizes that its proposal on compensatory time will not be effective until January 1, 1995. Yet, the increases it proposes are effective on October 1 in 1993 and 1994.

The City emphasizes that its uniform allowance proposal constitutes a legitimate quid pro quo, or portion thereof, for its compensatory time off proposal. The Union proposed increases in the uniform allowance in negotiations in 1990 and 1992.

In addition, the City notes that the increase in the cost of living from October 1992 to October 1993 was 3%. Yet the City offers a full 1.2% above the cost of living for the first year of the agreement, 1993-94. The increase in the cost of living to the date of the hearing and submission of briefs approximates 3.1%. Yet in the second year it proposes an increase of 4.2%, again, in excess of 1% above the increase in the cost of living.

The City then turns to describe how other criteria support its proposal. It argues that the overall compensation criterion provides a range of benefits at least equal to those provided by other employers. The City anticipates the Union's argument that there are areas in the range of benefits afforded to police officers in comparable units which are not provided to Verona police officers. The City notes that the matter of compensatory time has been an issue in bargaining and changes have occurred to this provision in all agreements from 1980 through the current agreement with the exception of the 1990-92 agreement. The parties have dedicated a great deal of time to compensatory time off, perhaps at the expense of the discussion of other benefits.

The City argues that Good Friday was not a holiday given to police officers in 1993 and 1994. The City argues that Easter is a holiday under the police agreement. Yet, that holiday was not claimed by DPW employees. Good Friday is a holiday under the DPW agreement. The two offset each other.

The City argues that the language, in question, affords employees in one unit a day off should the Mayor proclaim that day a holiday for any other group of employees. The City emphasizes that in 1993 and 1994 the police officers in this unit did not receive holiday pay for Good Friday. Members of the DPW unit do not receive Easter as a holiday. These decisions of the City

to refrain from making these payments have not been challenged by the Union despite the existence of the claimed "me too" language.

The City argues that the proposal to add a half-day Good Friday as a holiday has no support among the comparables. Police Officers receive nine holidays and two personal holidays- eleven holidays. The comparables it proposes average 10.23 holidays.

The City emphasizes that the Union provides no quid pro quo for its demand to change the status quo as to the number of holidays. In this regard, the total failure of the Union to meet its burden of proof suggests that the Arbitrator must reject the Union's final offer and select the City's for inclusion in a successor agreement.

The Employer concludes its argument by noting that in 1993, fifty-seven regular shifts were never scheduled in order to accommodate the compensatory time off taken by one employee. Management has no control over the use of compensatory time off. Due to the budgetary problems often faced by the Department at the end of the year, it does not have the resources to schedule part-time officers for the shifts taken off by the one officer. The City concludes by noting that:

> . . . The City's proposal does not attempt to limit the current amount of paid time off contained within the collective bargaining agreement, with the exception that the maximum accumulation of compensatory time will be capped at 53.33 overtime hours per year. However, on average, the police officers in the bargaining unit represented by the Union use less than the 53.33 overtime hours contained in the City's offer. Therefore, for most officers, the change will have little or no impact on their compensatory time usage.
>
> Thus, under the City's final offer, the average police officer employed by the City will continue to work an average of 1,566 hours per year, while the City will be better able to control scheduling problems, and in turn, will better accommodate the safety concerns of Verona's citizens. For this reason alone the economic *quid pro quo* provided by the City in return for the compensatory leave language change more than equitably compensates the police officers for the implementation of a yearly cap.
>
> . . .

> The City has further met its burden of proof and persuasion required as the proponent of change. The main thrust of the City's proposal is to place some restrictions on the ability of employees to accumulate and use an extraordinary amount of compensatory time off per year, as has occurred on (in) the past. The City has proven a fully justified need for the change. In addition, the comparables support restrictions on the ability of employees to accumulate and use compensatory time. The majority of the comparables also do not allow, or seriously limit, rebuilding of compensatory time. Even those comparables cited by the Union, but not cited by the City, support the concept of having some management control over compensatory time usage.

The City concludes that its offer is preferred over that of the Union and should be selected for inclusion in the successor agreement.

DISCUSSION

Introduction

In the award which follows, the Arbitrator first addresses the comparability issue. A discussion follows concerning the application of the change in status quo as an analytical tool in reviewing offers which propose a change in current working conditions. The Arbitrator then proceeds to apply the various statutory criteria to the final offers of the parties to determine the final offer to be included in the successor agreement.

Comparables

This is the first arbitration proceeding between these parties in either the police or the DPW/Clerical units. Consequently, the determination of the appropriate comparability grouping will, in all likelihood, impact upon the bargaining relationship of these parties. In order to determine this dispute, it is necessary for the Arbitrator to address and define the comparability pool.

Both parties identify the police departments of the same seven communities which are to serve as comparables to the Verona Police Department. Those communities are: De Forest, Fitchburg, McFarland, Monona, Oregon, Stoughton, and Waunakee.

For its part, the Union proposes Middleton and Sun Prairie as additional comparables. The Middleton Police Department has 16 officers

and the Sun Prairie department has 21.[1] Both communities are much larger than Verona. The City objects to the inclusion of Middleton and Sun Prairie in the pool of comparables on the grounds that the addition of these two larger departments weights the pool heavily to communities much larger than Verona. Among the agreed to communities, Fitchburg is a department of 15 bargaining unit officers, Monona has 15, and Stoughton has 17. Middleton with 16 and Sun Prairie with 21 would establish a comparability grouping wherein five of the nine comparables are substantially larger than Verona.

This argument of the City is well taken. Although this Arbitrator did include Middleton and Sun Prairie as comparables to the Village of Waunakee in his decision between the Village of Waunakee (Police Department) and this Union, Teamsters Local 695, in that case, the parties agreed to and identified both Middleton and Sun Prairie as comparables to Waunakee.[2] Where parties agree to the identity of particular communities as comparables, it is inappropriate for an Arbitrator to disturb that agreement. Here, there is no agreement to include Middleton and Sun Prairie as comparables. The City objects to the inclusion of these two larger communities. The Arbitrator agrees with the City argument that the inclusion of the larger Middleton and Sun Prairie departments would inordinately skew the comparability pool towards the larger departments.

For its part, the City proposes Mt. Horeb, Belleville, Dodgeville, Milton, Cross Plains and the Town of Madison as comparables to Verona. It proposes a large comparability group. It notes that the average size of the comparable community when the entire range of communities it proposes is calculated approximates the population of the City of Verona.

Milton is located in Rock County; Dodgeville is located in Iowa County. Both communities are some distance from Verona. The City assumes that the labor market for police officers, which the City maintains are professionals, is broader than the labor market for non-professional employees. This Arbitrator disagrees with the assumption that the labor market for police officers is broader. Law enforcement officers often are the subject of residency limitations in order to ensure prompt response time in emergency situations. As a result, it is difficult for an officer to live in Verona and take a job in Milton as a police officer. Whether or not residency limitations exist in particular communities is not the point. Law enforcement departments are concerned with the availability of police

---

[1]The parties presented conflicting numbers as to the size of the police departments of some of the comparables. The Union's figures are supported by the testimony of the Union's Business Agent. The discussion which follows is based on the Union's figures.

[2]Village of Waunakee (Police), Dec. No. 27679-A (Malamud, 11/93)

officers to respond to emergency situations. This requirement tends to contract the labor market for individuals who have identified law enforcement work as their career. In addition, Milton is located some distance from Madison but much closer to Janesville. It may well be affected by the Janesville labor market rather than Madison's. Dodgeville is located some distance from Madison and in another county. The City argues that no evidence was submitted at the hearing that Verona is a suburb of Madison. Nonetheless, the communities which this Arbitrator finds appropriately serve as comparables to Verona are those which ring Madison. Dodgeville is outside of that ring.

The City attempts to include in the comparability pool communities smaller than Verona to offset those communities in the comparability pool which are larger than Verona. The primary issue in this case is compensatory time off. Much of the difficulty which underlies the issue in this case is the decision of the City to staff its police department and patrol the city 24 hours per day, 365 days per year. In communities such as Belleville and Cross Plains, there is no evidence in this record which establishes that these communities do, in fact, patrol 24 hours per day, 365 days per year. Belleville has a police department of two and Cross Plains a department of three officers. In addition, Cross Plains has no compensatory time off provision. Even if Cross Plains maintained a 24 hour operation, the lack of a provision on the subject essential to this dispute limits the usefulness of including Cross Plains in the comparability pool, in this case. In addition, Cross Plains with a population of 2,098 is one of the smaller communities which rings Madison.

The Arbitrator would include Mt. Horeb as a comparable. It employs six unit officers. Its population is 4,182. It is smaller than Verona but certainly not as small as Belleville with a population of 1,456. Its taxable property is $151 million plus as contrasted with Verona's $215 million plus. By way of comparison, the full value of all taxable property in Cross Plains is just under $87 million. Mt. Horeb is a community not only similar in size but in resources available to support a 24 hour police department staffed, in the main, by full-time officers. However, Mt. Horeb has no provision concerning compensatory time off. Its inclusion in the comparability grouping would add little to the analysis of the primary issue in dispute, here.

The Town of Madison with a population of 6,442 and a police department comprised of 14 bargaining unit officers would, at first glance, appear as an appropriate comparable to Verona. Geographically, it is located very close to Verona. The Town of Madison per capita income is only slightly above Dodgeville. According to City Exhibit No. 7, the income and poverty level in the Town of Madison is 11 out of the 12 in rank on that indicator of the comparable communities suggested by the City. Its total taxable property of just under $193 million is less than Verona. The Town of Madison's population is larger than Verona. In addition, the Town of

Madison is comprised of geographic areas which are not contiguous one to another and which, in fact, are located some distance from one another. City Exhibit 9a suggests why the Town of Madison is an inappropriate comparable and a community unique to the Madison metropolitan area and which makes it difficult to include in this pool of comparables. The number of crimes committed annually, in 1992, was 772 in the Town of Madison; second only to the City of Monona. In the Village of Waunakee, supra, this Arbitrator concluded in that case that:

> . . . the Town of Madison is not an appropriate comparable. It is a disjointed community. The policing problems and unique characteristics of the town serve to exclude it as a comparable to Waunakee.

The review of the data presented by both parties in this case serves to strengthen the above conclusion. The Town of Madison's lack of geographic contiguity, the lack of economic resources available to the town to address its crime problems and the substantial difference in income of the population of the Town of Madison as contrasted to the other comparables are the reasons why this Arbitrator has excluded the Town of Madison from the comparability pool, in this case.

On the basis of the above analysis, the Arbitrator determines that the comparability pool are those communities agreed to by the parties. Those communities are: De Forest, Fitchburg, McFarland, Monona, Oregon, Stoughton, and Waunakee.

Status Quo

The analytical tool, the status quo, is an arbitral device to review a proposal which attempts to alter the language and practice followed by the parties under the expired agreement. Status quo falls under the criterion "such other factors." The Arbitrator addresses this issue separately because of its centrality to the determination of this dispute.

Tools of analysis are employed by an arbitrator to provide a measure against which the proposals of the parties may be judged. Arbitrators may agree on the tools to be used under a particular circumstance, although they may employ different standards in applying those tools to a particular case. The status quo is one and at the same time a basic element in the collective bargaining process; it presents a difficult and complex analytical problem in determining those situations in which a status quo analysis is appropriate and the elements to be considered in applying that analysis to a particular proposal for change.

Here, the Employer and the Union agree that the status quo analytical tool is appropriately used to determine the preferability of the Employer's

proposal to change a working condition, the amount of compensatory time off which a police officer in the City of Verona may use during a calendar year. The City acknowledges that it bears the burden of establishing the existence of a need for a change.

At page 12-13 of its brief, the City quotes from the award of Arbitrator Petrie in Mukwonago School District, Dec. No. 25380-A (Petrie, 1988), in material part, as follows:

> A complete refusal to allow innovation or to consider changes in the status quo . . . would operate to prevent public sector employers from gaining important changes through the collective bargaining process, which changes have already been enjoyed by certain private and/or public sector counterparts. . . if public sector neutrals were precluded from recognizing change or innovation . . . [a] union dedicated to the avoidance of change in a context where all impasses move to binding arbitration . . . would forever preclude an employer from achieving a change, even where it is desirable or necessary, and/or where the change had achieved substantial acceptance elsewhere.

The collective bargaining process provides employer and union with an opportunity to accommodate to change. Periodic bargaining permits the parties to adjust the terms and conditions of their agreement to the change in the work and economic environment in which they must function. A purpose of collective bargaining is to retain that which is effective and change those provisions in need of change.

Arbitrator Petrie states the importance of change to the collective bargaining process. This Arbitrator would expand the quoted excerpt from the Employer's brief to include proposals for change made by unions, as well. It is the experience of this Arbitrator that proposals for change are made by both sides of the table. Both employers and unions may and do resist change. Arbitrator Petrie states the arbitral rule that one side may not be permitted the right to veto proposals for change, where there is a need for change.

In D.C. Everest Area School District, Dec. No. 24678-A (2/88), this Arbitrator set out the following analytical structure to apply in cases in which a party proposes a change to the status quo:

> Where arbitrators are presented with proposals for a significant change to the status quo, they apply the following mode of analysis to determine if the proposed change should be adopted: (1) Has the

> party proposing the change, demonstrated a need for the change? (2) If there has been a demonstration of need, has the party proposing the change provided a quid po [pro] quo for the proposed change. (3) Arbitrators require clear and convincing evidence to establish that 1 and 2 have been met.[1]
> [1]. See City of Plymouth (Police Department), (24607-A) 12/87, Arbitrator Krinsky; Lafayette County (Highway Department), (24548-A) 10/87, Arbitrator Bilder.(footnote included in quoted award)

The City cites the decision of Arbitrator McAlpin in City of Menasha (Police Department), Dec. No. 27784-A (McAlpin, 6/94), who stated that:

> When one side or another wishes to deviate from the status quo, the proponent of that change must fully justify its position and provide strong reasons and a proven need. This arbitrator recognizes that this extra burden of proof is placed on those who wish to significantly change the bargaining relationship. **In the absence of such showing** the party desiring the change must show that there is a quid pro quo or that other comparable groups were able to achieve this provision without the quid pro quo. (Emphasis added)

The manner in which Arbitrator McAlpin uses the status quo analytical tool is certainly hinted at in the quote from Arbitrator Petrie's award in Mukwonago School District. Arbitrator McAlpin sets out a clear analytical method for applying the status quo tool. First, the Arbitrator determines whether the party proposing a change has demonstrated strong reasons and proven need for the change. In the absence of that evidence, the proponent of change must either provide a quid pro quo or establish that comparable groups were able to achieve the provisions sought by the proponent of change.

In a case addressing the question of the status quo in Sheboygan County (Highway Department), Dec. No. 27719-A (Malamud, 4/94), the decision of Arbitrator Vernon on this issue was cited to this Arbitrator. Arbitrator Vernon in Elkhart Lake-Glenbeulah School District, Dec. No. 26491-A (1990) observed that:

> When an arbitrator is deciding whether a change in the status quo is justified, he/she is really weighing and balancing evidence on four considerations. They are: (1) If, and the degree to which, there is a demonstrated need for the change, (2) if, and the

> degree to which, the proposal reasonably addresses the need, (3) if, and the degree to which, there is support in the comparables, and (4) the nature of a quid pro quo, if offered. (This quotation came from the Employer's brief and it appears in the award in Sheboygan County.)

There is one common thread found in each of the arbitral methods used to apply the status quo analytical tool. Each of the arbitrators require that the proponent of **change** demonstrate a need for the **change**. After that, there is apparent disagreement as to what the proponent of change must establish.

In the discussion which follows, this Arbitrator describes the reasons for his use of the analytical framework as described in D.C. Everest Area School District. It is not the purpose of this Arbitrator to refute the analytical frameworks employed by the arbitrators quoted above. Arbitrators each have a mode of analysis with which they are comfortable. The method in which the status quo analysis is applied makes a difference in this case. Accordingly, this Arbitrator explains the reasons which underlie the analytical framework which he employs.

This analysis assumes a scenario in which one side proposes a change to the status quo and the other proposes retention of the status quo. The party proposing the change must overcome inertia which is present in the collective bargaining process as it is elsewhere in human existence. It must show that the present situation does not work or creates problems which must be addressed.

This Arbitrator does not require that the proponent of change establish that its proposed change will reasonably address the identified need. The Arbitrator finds that the imposition of this requirement unduly hampers the ability of a proponent of change to establish its case. It places the arbitrator in a situation in which she/he must speculate as to how the proposed change will address the need. In most situations, the proposed change is new and it is unknown how it will affect the established need. Certainly, reference to comparable jurisdictions may lend support to the argument that the proposed change will work. However, the party opposing change may always argue that the conditions present in the jurisdiction in which the change is proposed differ from the comparable jurisdictions. In addition, the party opposing change may assert and indeed may establish, that the comparable jurisdictions obtained the disputed condition of employment through the bargaining process where one thing was given up for another. These matters become difficult to prove. The imposition of the requirement that the proposed change reasonably address the established need could have the unintended effect making it difficult to make the case for change. If the arbitration process becomes so burdensome, then the

opponent of change has a de facto veto over the inclusion of change in the bargaining agreement.

The requirement, that the proponent of change convince the Arbitrator of the need for change, recognizes the importance and the difficulty which the proponent of change may encounter in attempting to change the status quo. Whatever the issue, whether it is compensatory time off or any other kind of cap be it in salary or in the conditions of employment under which employees may take additional time off, the proponent of change may carry it to impasse if it determines for itself that there is a strong need for the change. Accordingly, for an arbitrator to impose a condition of employment on a party opposing change, the arbitrator must be convinced of the need for that change.

This Arbitrator requires that a party that is able to demonstrate a need for change must also provide a quid pro quo for the change it proposes. There are two reasons for this requirement. First, as noted above, this Arbitrator does not mandate that the proponent of change establish that the proposed change will successfully address the need for change. Similarly, the arbitrator does not look to comparability in the status quo analytical framework in order to make the case that there is a need for a change. Certainly, a party may refer to the existence of the proposed change in all or most of the comparables in its effort to establish the need for change. That evidence is appropriate and would be considered under the analytical framework used by this Arbitrator. However, it is not a necessary condition to establish the need for change.

Secondly, and perhaps the most important reason for this Arbitrator's insistence that the proponent of change provide a quid pro quo is tied to the statutory framework in which the status quo analysis is found. The status quo is a factor included in the statutory catch all "such other factors" normally found in the collective bargaining process. Ordinarily, neither a union nor an employer obtain a significant change in their collective bargaining relationship for nothing. Simply put, one does not get something for nothing. There is an exchange that occurs in the bargaining process, whether it be tacit or implicit, but that exchange does occur.

The extent of the quid pro quo may well be affected by the extent to which the need for change has been established in the record. Where the evidence is clear and convincing that there is a need for a change, yet one party opposes change, the necessary quid pro quo may be limited or small, indeed. The difficulty present in the analytical framework as articulated by this Arbitrator is the problem of measuring the adequacy of a quid pro quo. Under this narrow and limited analytical framework, it would run counter to this Arbitrator's understanding of the collective bargaining relationship to permit one side to obtain a change in an area in which there is a dispute over the need for the change without providing some quid pro quo for that change.

The reader should remember that this analysis assumes a scenario in which one side makes a proposal in the face of a need for change, while the other stonewalls and opposes change. Once the need for change has been established, the position of the party opposing change is undermined. The party opposing change has decided to sink or swim on the basis of the absence of a need for change, or in its belief, that the other side will not be able to establish the need for change. Once that need for change has been established, the party stonewalling has left the field open to the proponent of change. It is the proponent of change that is the only one that makes a proposal to address the need for change.

In those cases in which both parties recognize the need for change, often agreement follows and the parties do not appear in arbitration, at least on that particular issue. In the alternative, if both parties observe a need for a change, then both parties make proposals for change. It is under those circumstances where both parties make proposals for change that it is appropriate for the arbitrator to determine which proposal better addresses the established need for change; which proposal will more likely succeed in addressing the established need for change.

It is through the above analytical framework that this Arbitrator applies the status quo analysis in furtherance of the statutory purpose of encouraging collective bargaining. A balance between the need for change and the need for stability is reflected in the above analytical tool. The party proposing change must establish the need for change and convince the Arbitrator of that need. The imposition of this burden accords to the status quo its important role in maintaining stability in the bargaining relationship between the parties. On the other hand, once a need for change is established, the imposition of a quid pro quo provides the opponent of change with something in exchange for changing the status quo. In addition, the party that opposes change, in the face of a clear need for change and which carries that resistance to change to arbitration, incurs an enormous risk. The opponent of change that chooses to stonewall and act as if there is no need for a change leaves to the other side the ability to identify the solution for the problem giving rise to the need for change.

The risk incurred by the opponent of change mounts when one considers that the most difficult job facing the arbitrator is to evaluate the adequacy of the quid pro quo. The opponent of change is left to the argument "it ain't enough" in the face of a clear need for change. For the above reasons, this Arbitrator follows the above analytical paradigm in evaluating an offer which includes a proposal to change the status quo relative to the working conditions extant in a collective bargaining agreement. The Arbitrator now turns to apply the status quo analytical tool to the compensatory time off issue, the issue identified by the parties as central, in this dispute.

COMPENSATORY TIME OFF - NEED FOR A CHANGE?

The City argues that there is a need for a change. The rebuildability of the compensatory time off bank permits employees to use large amounts of compensatory time off. The Department must cancel shifts or staff with less experienced part-time employees in order to accommodate compensatory time off usage.

Union Exhibit 13 documents compensatory time usage for all of 1993 and the first six months of 1994. City Exhibits 77 and 78 document compensatory time accumulation and usage in the Verona Police Department from 1985 through 1993. The Arbitrator computed average compensatory time usage based on the City's exhibits. In doing so, the Arbitrator excluded new employees from the calculation of the average. If anything, this would tend to increase the average amount of comp time usage. New employees were not considered in the calculation until the second year they appeared on the Employer's roster. The effect of this calculation is minimized by the **practice** extant in Verona. Overtime is offered first to the most senior employee. To simplify the analysis the Arbitrator views the evidence in a light most favorable to the City, the Arbitrator did not include employees in this compensatory time analysis who chose to take all overtime in pay rather than in compensatory time off.

In 1988, the average compensatory time off taken was 142.5 hours by three full-time employees. In 1989, it was 147.75 hours. In 1990, four full-time officers took an average of 212 hours of compensatory time off. In 1991, six full-time officers took an average of 97 hours. In 1992, the average declined to 77.5 hours.[3] In 1993, five full-time officers averaged 86.1 hours of compensatory time usage.

The Union's Exhibit 13 notes that 70.5 shifts of compensatory time, inclusive of the Sergeant's compensatory time off, were taken off in 1993. The Sergeant is not included in the unit. However, the Sergeant is included for staffing purposes and he performs patrol duties. For 17 of the 70.5 shifts, the City left the shift vacant or kept staffing with one officer off. It is on this point that the City makes its safety argument. The City schedule contains power and swing shifts to provide backup and additional coverage during the peak hours of calls for service during a 24 hour period and on days of the week when the department experiences its peak load. By staffing with one officer rather than two officers, the additional safety hazard to the officers on duty and to the citizens of Verona is created.

On another 10 occasions, there was a realignment of existing staff to cover shifts. This was done at no additional cost. Again, the City suggests that such coverage was accomplished at the expense of safety. Instead of

---

[3]Officer Daniels who retired on January 1, 1993, was included in the compensatory time off calculation for 1992.

providing patrol in the city with two officers at peak periods, the City made do with one. Thus, 38% of the shifts on which compensatory time was used, the City operated below its optimum staffing level.[4] The City points to the use of compensatory time off by one employee in 1993. He was able to use compensatory time off during the year in order to save vacation and use it for a period of six weeks from November through the end of December 1993. The City proposes the cap on compensatory time usage in order to gain some control over employee use of compensatory time off.

The Union counters. It argues the City needs additional staff. The manner in which the City responds to time off taken from Thanksgiving through December 31 is the result of budget shortages rather than compensatory time off usage.

Both parties refer to the various devices employed by the comparables to limit or control compensatory time accrual or its usage. For example, the City of Fitchburg provides an accumulation limit of 60 hours of compensatory time off. Other devices used by departments other than Verona to control overtime accumulation or usage include mutual approval of when compensatory time off may be taken. Other departments have an absolute ban on allowing staffing to accommodate compensatory time off through overtime. In this regard, the City of Verona limits the taking of compensatory time off to those occasions when part-time officers may be scheduled. The Contract provides four "gimme days." With proper notice, an employee may take compensatory time off even though the use of the compensatory time will result in scheduling an officer on an overtime basis.

The Union argues that if the problem is as described by the City, it should have proposed one of the other devices, other than capping usage at 80 hours, to control when and how compensatory time off is used. For its part, the City argues that it could have proposed one of the other devices which are far more limiting than the proposal it makes, here to control compensatory time usage. As noted above, whether the device chosen will succeed or is likely to succeed in controlling compensatory time usage is not the focus of this Arbitrator's analysis. The City's proposal is not farfetched or outlandish. It is related to the projected need. The Union forfeits the argument that something else would have worked better. Its final offer is premised on its view that there is no problem which need be addressed or that the City will be unable to demonstrate the existence of a problem. The focus of the analysis which follows is <u>not</u> on what the Employer "could'a" proposed or what it "should'a" proposed, but what it does propose. Accordingly, the Arbitrator now turns to determine if the City has established the need for the change.

---

[4]The power shift is scheduled in the City on Thursday, Friday, Saturday. From the testimony of Chief Moffet and the exhibits presented, it appears to the Arbitrator that the realignment of staff would come from either the power or swing shifts.

Compensatory time off is generated by employees working overtime. The more overtime worked, the greater the amount of compensatory time off that a particular employee may take. The City controls the amount of overtime scheduled to provide adequate staffing. A reason for the large accumulation of compensatory time off by one employee stems in part from his ability, under the **practice** extant in the City, to have a first crack at all overtime opportunities which become available.

The Arbitrator has calculated the staffing average by population and finds that there is only the slightest difference between the average population per bargaining unit officer in the City of Verona as contrasted to those of the comparables. As a result of increasing calls for service, the City has applied for a grant to permit it to expand its staff. This application tends to support the City's position that it requires additional staff on the streets rather than officers off on compensatory time. However, it does not overcome the basic fact that compensatory time off is the result of employees working overtime. The particular availability of a large amount of compensatory time off to one employee is achieved by that employee working a large amount of overtime. It may be disturbing to the City that the officer is able to work overtime when he desires, because he has the first crack at all overtime opportunities, and then he is able to take off when he wishes by using the accumulated compensatory time off.

Union Exhibit 13 suggests that approximately 38% of the shifts of compensatory time usage were at the expense of placing a second officer on patrol in the City.[5] Non-bargaining unit part-time officers are used for the most part to fill-in when compensatory time is taken. This evidence suggests that the City is operating a substantial portion of its scheduled shifts with fewer full-time employees thereby negatively impacting the quality of service which it has determined to provide to the citizens of Verona. Certainly, this is evidence of a problem which must be addressed. The City is the party which decides the quality of the police service it will provide to its citizens.

In this Department, non-bargaining unit command officers, the Sergeant and the Lieutenant[6] perform important policing functions other than administration. The Sergeant is included in the normal patrol rotation.

---

[5]The record evidence is not so precise that it demonstrates that all 27 shifts, which were not staffed with additional full-time or part-time personnel, occurred at the expense of the power or swing shifts. For purposes of this analysis, the Arbitrator assumes that the compensatory time off was scheduled at the expense of the power and swing shifts.

[6]City Exhibit 58, the City of Verona Administrative and Professional Compensation Benefit Plan permits these two officers to earn overtime. They may take it in the form of pay or compensatory time off.

The Lieutenant is the officer who performs detective work in the City of Verona. As non-bargaining unit personnel, the City unilaterally controls their working conditions. Yet, Union Exhibit 43 demonstrates that the Lieutenant used 167 hours of compensatory time off in 1992 and 86.25 hours of compensatory time off in 1993. The Sergeant used 104 hours of compensatory time off in 1992 and 95.25 hours in 1993. Their usage of compensatory time off roughly tracks the average of compensatory time off taken by bargaining unit officers during those two years. The City has not acted to cap the amount of compensatory time which may be used by these two officers who perform important policing functions other than the administration of the police department. A lot of data and computations were provided to the Arbitrator by the City both in its exhibits, the testimony of Chief Moffet, and in the City's briefs. However, if compensatory time usage is so great a problem that it must be capped at 80 hours, why has the City failed to implement that policy for the officers whose working conditions it unilaterally controls? No answer is provided to this question in this record. It undermines the City's argument that the level of service which it has determined to provide to its citizens necessitates the imposition of a cap of compensatory time off usage in a calendar year at 80 hours.

The Arbitrator is not convinced by the City's calculation that compensatory time off when staffed with a part-time employee is more expensive than if it is taken as overtime pay. The premium of the half-hour is paid by the City at the part-time employee's rather than the higher full-time employee's rate. There is some savings to the City when employees elect to take compensatory time off rather than overtime pay. It is this savings that serves as the basis for the smaller cities cited by the Employer as comparables to encourage employees to take compensatory time off rather than overtime pay. Those smaller communities, which do not schedule on a 24 hour basis, view an employee's taking time off as an opportunity to save money. Obviously, if the premium half hour is not staffed, a great deal more is saved than if it is staffed with an employee at a lower wage rate.

To summarize, compensatory time off or overtime pay may be earned only if the City makes the decision to schedule overtime. The Arbitrator is mindful that officers may be required to work beyond their normal work schedules and accumulate overtime for reasons not totally in the control of the City. Nonetheless, the large amounts of overtime and compensatory time at issue here are the result of the City decision to schedule such amounts of overtime. The City's claim that compensatory time usage is a problem is undermined by its failure to impose a cap of 80 hours on the Sergeant who is included in the scheduling of patrol along with bargaining unit officers. Similarly, the Lieutenant, who performs detective work in the City, is not subjected to the 80 hour cap. Since the Employer has failed to establish a need for the change in the status quo, the Arbitrator does not reach the issue whether the City proposes a discernable and adequate quid

pro quo. Accordingly, the Arbitrator concludes that the City has not substantiated its need for the change. The status quo element of the "such other factors" criterion supports the Union's position.

Comparability

The City argues that the comparables employ devices to limit the accumulation or usage of compensatory time off. The Arbitrator has included as a comparable supporting the City's position those communities which employ devices to severely limit the accumulation of compensatory time off. For example, the City of Fitchburg is included as a comparable supporting the City's position, inasmuch as the accumulation of compensatory time off is limited to 60 straight time hours. The Village of Oregon severely limits the use of compensatory time off. De Forest does not permit the rebuildability of the compensatory time off bank.

The Arbitrator has considered the conflicting evidence submitted on this point by the Union and the City. Four of the comparables do provide for the rebuilding of the comparability bank: McFarland, Monona, Stoughton, and Waunakee[7]. Comparability does not support the City's position in the status quo analytical framework, nor does it support the Employer's position when this factor is considered separately.

The City argues that internal comparability should be given great weight. The Department of Public Works Agreement has language more restrictive than the City proposes here. The DPW unit has agreed to a compensatory time off cap in their 1990-2 agreement which initially limits compensatory time off to 80 hours and then reduces that cap to 60 straight time hours.

The Union argues, and this Arbitrator agrees, that compensatory time off is of far more importance to a police department and police officers than to other City departments. There is no evidence in this record that employees in the Department of Public Works are provided with as much overtime opportunities as police officers. Employees in the Department of Public Works may indeed be offered and work large amounts of overtime in performing plowing and other duties in the city. Nonetheless, there is no showing that compensatory time off and staffing constitute the same kind of

---

[7]The Village of Waunakee permits accumulation of 480 straight time hours of compensatory time off for those employees who make the election for the term of their employment with the Village to take compensatory time off rather than overtime pay. There is no indication that compensatory time usage is a concern under language which provides for such a high cap. Although the representative of the police officers in Waunakee testified, there is no evidence in this record to suggest the number of officers who have elected to take compensatory time off rather than overtime pay.

problem that it does in a police department which is staffed 24 hours per day, 365 days per year.

Certainly, the existence of this cap in the DPW/Clerical unit provides some support to the City's position. However, it is not accorded the weight which is normally provided to an internal comparable on a matter such as a percentage wage increase or holiday benefit. Accordingly, the Arbitrator concludes that the internal comparability component of the "such other factors" criterion provides some support to the adoption of the City's position.

Interest and Welfare of the Public

To some extent, the staffing of the power shift suffers when compensatory time off is taken by police officers. Staffing without backup does place those police officers on duty and the citizens of Verona at greater risk. In the discussion above, the Arbitrator concludes that the accumulation of compensatory time off is more a function of the decision of the City to schedule large amounts of overtime rather than the use of compensatory time off. The Arbitrator concludes from the Employer's own conduct that compensatory time off usage is not so great a problem as to force the City to unilaterally impose the 80 hour compensatory time off cap on those command officers who are included in the patrol schedule or who perform the police investigation work in the City. For those reasons, the Arbitrator concludes that the City did not demonstrate a need to change the status quo. However, the evidence does suggest that the interests and welfare of the public are better served by the limited extent to which the compensatory time off cap may provide additional staffing for the power and swing shifts. Accordingly, the Arbitrator concludes that this criterion provides some support to the City's position.

Overall Compensation

The Union argues that a generous compensatory time off provision offsets the lack of other benefits in the range of benefits provided by the City to its police officers. In this regard, the Union points to the lack of education pay in this Department.

The City responds by noting that the parties have spent a great deal of their collective bargaining time over the years on the compensatory time issue. In particular in this bargain, the Union petitioned for arbitration after two meetings.

The Arbitrator finds that both parties are correct. Compensatory time off is not an issue which parties ordinarily address in all but one agreement covering the period of 1980 through 1994. Much time has been dedicated to bargaining over compensatory time. With turnover in the department many of the officers, do not have long seniority in the Department. They

and the City may well benefit from an educational pay program. However, as noted by the City, a great deal of bargaining time is dedicated to compensatory time. The Arbitrator finds that this criterion equally supports the position of the City and the Union.

Summary on the Compensatory Time Off Issue

The criterion "interests and welfare of the public" and "internal comparability" components of the "Such other factors. . ." criterion support the City's position. The Union position to retain the status quo on the compensatory time off issue is preferred. External comparability factor provides narrow support for the Union's position. The Union's position on the proposal to cap compensatory time off usage is preferred as a result of the City's failure to establish the need to change the status quo.

OTHER COMPENSATORY TIME OFF ISSUES

The City proposes that the limit on the amount of compensatory time off be reduced from 81 to 80 hours. Neither party proposes altering the number of overtime hours referenced in the Agreement from 53.33 hours to 54 hours. Fifty-four overtime hours would generate 81 straight time hours.

The Union maintains that the number of straight time hours was increased to 81 in the last bargain to ease the administration of this provision. Both sides acknowledge the unimportance of this issue. The City proposal re-introduces consistency between the number of overtime hours indicated in the agreement and the straight time hours it generates.

Obviously, a proposal to fix the number of overtime hours at a whole number which in turn would generate a number of straight time hours in a whole number would be preferred. Fifty-four overtime hours generates 81 straight time hours. However, neither the City nor the Union proposal introduces the consistency and administrative ease necessary, here.

However, most of the comparables cap the accumulation of compensatory time off at 80 hours. The Employer proposal is preferred on the basis of the comparability criterion.

When Compensatory Time May Be Taken

The parties acknowledge that the practice in Verona is to allow employees to take compensatory time off to the end of the year; i.e., December 31, provided it is scheduled before December 15. The City states that it does not intend to change the practice. Yet, the clear language of its proposal would require employees to schedule and take compensatory time off no later than December 15 of any particular year. The City proposal, in

this regard, would only inject confusion where the language and the practice of the parties is clear.

Accordingly, the Arbitrator concludes that the Union's proposal to retain the language of Article 5.1(e) as it appears in the expired agreement is preferred.

UNIFORM ALLOWANCE

The City seeks to increase this benefit by $50 in the first year of the agreement and an additional $25 in the second. The Union argues that with the ability to carry over unused amounts of uniform allowance, there is no need for the increase.

Employees must submit a voucher to the Chief to replace an item of clothing. There is no evidence in this record which suggests that any employee has reached the limit of the uniform allowance. The Chief testified at the hearing. No evidence was elicited from him that employees were wearing uniforms beyond their useful life. There is nothing in the record to suggest that the appearance of the Verona police officer is anything but what it should be. There is no evidence to serve as a basis for increasing the uniform allowance under the voucher system present in Verona.

The Arbitrator concludes that the statutory criteria do not support the increase in the uniform allowance as proposed by the City.

GOOD FRIDAY

At present, the police officers of the City of Verona enjoy the greatest number of holidays than any other employee, represented or non-represented, in the City. The police receive nine specified holidays and two personal days. The average number of holidays enjoyed by the comparables identified in this case is 10.21. The Union proposes to increase the number of holidays from 11, which already exceeds the average, to 11.5 holidays. The Union's offer is not supported either by internal or external comparables.

The City argues that the Union has failed to meet the status quo component of the "such other factors" criterion in support of its proposal to increase the number of holidays enjoyed by police officers in the City of Verona from 11 to 11.5. In response, the Union argues that by accepting a lower than average wage increase of 4% rather than 4.2% it provides a quid pro quo for its proposal.

The Union bases its argument to include Good Friday as a holiday on its interpretation of the language:

> All employees shall receive holiday pay for all additional holidays declared by the Mayor for any other City employees.

The Union argues that Good Friday has been inserted in the DPW agreement. Accordingly, under this "me too" provision Good Friday should be inserted in the successor agreement.

The language of the agreement is susceptible to the interpretation put forth by the Union. However, this language was in effect in the DPW agreement at the time that Good Friday occurred in the spring of 1994. Yet, the Union made no claim for holiday pay under the language quoted above. The failure to even make a demand for holiday pay suggests that both the City and the Union interpreted this language in the manner put forth by the City. The City suggests that this language is meant to apply to a situation means in which for some reason the Mayor should declare a particular day a holiday, his doing so for one unit will provide the holiday for this unit, as well.

Since the Union's offer is supported neither by the comparability criterion nor by the components of the "such other factors" criterion, internal comparability or status quo, the Arbitrator concludes that the Union has failed to establish the basis for the inclusion of this proposal in the successor agreement. The Union offer to increase the number of holidays from 11 to 11.5 serves as a substantial detriment to the inclusion of the Union's offer in the successor agreement.

WAGES

In the above analysis, the Arbitrator does not reach the issue of whether the City's wage proposal serves as an adequate quid pro quo for its proposal to change the compensatory time off language in the expired agreement. However, the wage issue bears analysis as a separate proposal. The positions of the parties are close to one another. The City claims, in its argument, that its proposal at 4.2% in the first year exceeds by approximately 1% the average increase provided by the comparables.

At the conclusion of the Background section, the Arbitrator notes the difficulty in comparing the wage offers of the parties to the wage agreements reached by the comparables. The effective date of any wage increase in Verona is October 1. The City suggests in its brief that the City's wage proposals for the first year be contrasted to the wage agreements reached in calendar year 1994 and, similarly, the wage increases proposed for the second year of the agreement be compared to the wage rates set by the

comparables for calendar year 1995. The comparisons generated by the Employer in its brief ignores the effect of the split increase. The Arbitrator considers both the cost to the Employer/money received by employees resulting from a percentage increase, as well as, the wage levels generated by proposed increases.

Based on Union Exhibit 28, the Arbitrator calculates the average cost of the increases provided by the comparables inclusive of those comparables with split increases. The average increase is 3.124%. The City is correct that its proposal exceeds the average increase provided by the comparables by slightly over 1%. However, Chart 1, below, indicates that the wage proposals of the parties leave the wage rates of the City of Verona relatively close to the same position it was in at the conclusion of the base year, 1992. An insufficient number of comparables have settled for calendar year 1995 to determine the wage level and average percent increase of the comparables for calendar year 1995.

When the wage issue is considered by itself, the lower offer is closer to the Cost of Living and more in line with the average percentage wage increases and wage levels generated by the comparables. Accordingly, the Union's lower offer is preferred.

CHART 1

Comp	1/1/92	7/1/92	1/1/93	7/1/93	1/1/94	7/1/94	1/1/95	7/1/95
De Forest	13.18	13.45	13.85	14.13	14.55	14.84	15.29	15.59
Fitch-burg	15.17		15.78		16.10		16.91	
Mc Farland	12.30	12.67 (9/1)	13.05	13.44 (9/1)	13.71	13.99	14.27	14.69
Monona	15.12		15.88		16.20	16.56	17.22	
Oregon	11.30		11.64	11.99	11.99	12.35	NS	
Stoughton	14.95	15.25	15.55	15.86	15.97		NS	
Wauna-kee	12.95		13.60		NS		NS	
Average	13.57		14.19		14.75	14.97	15.92	
Verona City offer	13.80 (2/1)		14.38 (10/92)		14.98 (10/93)		15.61 (10/94)	
Verona Union offer	13.80 (2/1)		14.38 (10/92)		14.98 (10/93)		15.58 (10/94)	
difference from avg City offer	+23¢		+19¢		+23¢			
difference from avg Union offer	+23¢		+19¢		+23¢			

SELECTION OF THE FINAL OFFER

In the above discussion, the Arbitrator determines that the City has failed to establish the need to impose a cap on the number of hours of compensatory time off which officers may use in a calendar year. In addition, the Arbitrator finds that the comparability criterion does not support the City's offer. The "interests and welfare of the public" criterion as well as the internal comparability component of the "such other factors" criterion provides some support for including the City's final offer in the successor agreement. However, on balance, the Arbitrator concludes that the Union proposal to retain the status quo and the language as it appears in the expired agreement is to be preferred.

The City's proposal on whether 81 or 80 straight time hours should be stated as the number of compensatory time off hours a police officer may accumulate is supported by the comparables.

The City's proposal to alter the language of Article 5.1(e) would inject confusion where there is none. The present language together with the practice of the parties are consistent. The City's "clarification" would require that employees both schedule and take compensatory time off by December 15. The scheduling of compensatory time off after the close of the pay period does not appear to have created any administrative problems for the City, so long as the compensatory time off was scheduled prior to December 15, before the close of the last pay period. The above summary establishes that the City has failed to establish the need for a change, in the first instance, and secondly its proposed changes are not supported by the comparables (with the exception of reducing the number of hours from 81 to 80). Accordingly, the Union offer to retain the status quo is preferred.

On the other hand, the Union proposes to increase the number of holidays for police officers from 11 to 11.5. There is no basis in the record for this increase. The Union's own conduct and its failure to demand that police officers receive a half-day holiday for Good Friday after that half-day holiday was provided to DPW employees belies the interpretation of that language which it presents in this case. Its proposal to increase the number of holidays is not supported by the external or internal comparables. No criteria supports this change. Accordingly, the Arbitrator finds that this proposal serves as a substantial reason for rejecting the Union's final offer.

On the wage issue, the Arbitrator determines that the Union offer, the lower offer, is preferred. However, in this case, the wage issue is given little weight.

The Arbitrator is confronted in this case with two proposals. The City has failed to establish the basis for including its proposal for change to the status quo in the successor agreement. The Union has failed to establish the basis for including its holiday proposal in the successor agreement. The

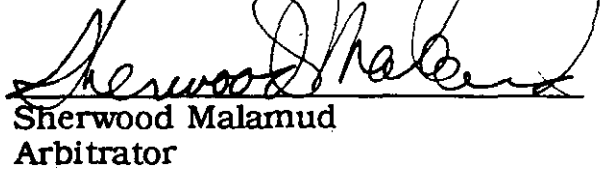
parties do agree that the compensatory time off issue is the more important issue presented to this Arbitrator. Accordingly, the Arbitrator provides greater weight to the City's failure to establish the need to change the status quo and to substantiate the basis for the other changes which it proposes to make to the expired agreement. On that basis, the Arbitrator selects the Union's final offer for inclusion in the successor agreement.

On the basis of the above discussion, the Arbitrator issues the following:

AWARD

Upon the application of the statutory criteria found at Sec. 111.77(4)(b), Wis. Stats., and upon consideration of the evidence and arguments presented by the parties and for the reasons discussed above, the Arbitrator selects the final offer of Teamsters Local 695, which together with the stipulations of the parties, are to be included in the collective bargaining agreement between Teamsters Union Local 695 and the City of Verona (Police Department) effective October 1, 1993, through September 30, 1995.

Dated at Madison, Wisconsin, this 30th day of December, 1994.



Sherwood Malamud
Arbitrator